Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1995

94-1940

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER

VS.

FAROD MALLORY AND GARY GOODWIN
RESPONDENTS

ON CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MICHIGAN

ANSWER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

DEFENDER'S OFFICE-LEGAL AID AND
DEFENDER ASSOCIATION OF DETROIT

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BEST AVAILABLE COPY

COUNTER STATEMENT OF QUESTION PRESENTED

IS THE DECISION OF THE MICHIGAN COURT OF APPEALS REVIEWABLE BY THIS COURT WHEN THE LOWER COURT RELIED UPON THE DUE PROCESS CLAUSE OF THE MICHIGAN CONSTITUTION, RELIED UPON A PRIOR "MICHIGAN TEST" FOR EXAMINING A PRE-ARREST CLAIM OF DELAY AND DID NOT RELY UPON ANY FEDERAL AUTHORITY?

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STATEMENT OF JURISDICTION

As will be shown in the Respondent's brief, this Court does not have jurisdiction, based on 28 USC 1257(a), over this case.

STATEMENT OF THE CASE

In June of 1989, Respondent Gary Goodwin was charged with the June 22, 1984 murder of Donald Bankston by the Wayne County, Michigan Prosecuting Attorney. (II. p. 6).* Respondent filed a motion to dismiss the charges on the grounds that the prejudicial five-year-delay in obtaining the warrant against him deprived him of his constitutional right to a fair trial. An evidentiary hearing on the motion was held before the Honorable Judge Denise Page Hood, Recorder's Court Judge for the City of Detroit.

At the hearing, Respondent Goodwin testified that he was with his aunt, Ms. Patricia Goodwin, at the time of the murder. (I. p. 54). Ms. Goodwin would be unavailable as an alibi witness at trial due to her death in the fall of 1988 (I. p. 81). Respondent Goodwin further testified that he learned of

Bankston's murder from his aunt. (I. p. 53). Respondent Goodwin was arrested on July 30, 1984, held for three days and questioned about the Bankston homicide by the Detroit Police Department (I. p. 55). During his 1984 interrogation, Respondent told Sgt. Rice, the Detroit Police Officer in Charge of the Bankston homicide investigation, that he was with Patricia Goodwin at the time of the homicide (I. p. 79).

The Petitioner presented Sgt. Rice in an attempt to justify the lengthy delay between the murder and the issuance of the warrant. Sgt. Rice stated that in 1986-87 he participated in a joint federal-state task force investigating the activities of an alleged conspiracy known as "Young Boys Inc." (II. p. 19). The investigation eventually resulted in federal indictments being issued in July of 1987. (I. p. 21).

During his participation in the task force investigation, Sgt. Rice testified that he was prohibited from disclosing any information which was before the grand jury by an agreement between the U.S. Attorney's Office and the Wayne County Prosecutor's Office. (II. p. 21). Pursuant to this agreement, Sgt. Rice believed that he could not pursue any information that was before the grand jury in state court until after the federal indictments were issued. (II. p. 21).

On August 22, 1986, Sgt. Rice interviewed Spencer Holloway (II. p. 19-20). Holloway claimed that Defendant Goodwin had participated in Bankston's murder. (II, p. 19). Mr. Holloway was a convicted murderer who had become a federal witness against his alleged former associates. (II, p. 18). Sgt. Rice admitted that he "never doubted" the statement of witness Holloway. (III, p.2).

On July 17, 1987, the task force investigation was complete with the issuance of several federal indictments. (II, p. 27).

In February of 1988, Sgt. Rice interviewed another federal informant, Charles Obey, who allegedly corroborated Holloway's claim that Respondent Goodwin was involved in Bankston's murder. (II. p. 24). Sgt. Rice testified that he then sought to interview other witnesses who might have knowledge of the murder. He agreed, however, that he believed Holloway and that he had enough evidence to seek a warrant from the Prosecutor's Office without any corroboration of Holloway's statements. (III. p. 3). Sgt. Rice never explained why he could not seek to corroborate Holloway's information while the indictment was pending instead of waiting until 1988 to seek corroboration.

The warrant request was prepared and sent to the Wayne County Prosecutor's Office on October 10, 1988.

The warrant, however, was not approved by an Assistant Wayne County Prosecutor until May 5, 1989, some seven months later. (III. pp. 3 & 4). Judge Hood found that this last period of delay was not justifiable, "the delay in signing the warrant resulted in nothing that advanced or helped secure the issuance of the warrant or furthered the investigation of the murder. It did, however, further serve to prejudice the defendants." (III. p.8-9).

In granting Respondent Goodwin's motion to dismiss on December 12, 1990, Judge Hood ruled that "... the prejudice resulting from the loss of essential alibi witnesses outweighs the reasons for delay which cannot in this case fully justify the resulting prejudice." (III. p.9).

The Court of Appeals affirmed the trial court's decision. **People v Mallory**, unpublished memorandum of the Court of Appeals, decided December 22, 1994 (Docket No. 136641).

The Michigan Supreme Court denied Petitioner's Application for Leave on April 18, 1995.

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* I. Refers to proceedings held on January 12, 1990.

II. Refers to proceedings held on January 19, 1990.

III. Refers to memorandum decision of December 12, 1990.

REASONS FOR DENYING THE WRIT

This Court lacks the jurisdictional authority to grant Petitioner's writ of certiorari. The December 22, 1994 decision of the Michigan Court of Appeals is not reviewable by this Court because it was decided upon the due process clause of the constitution of the State of Michigan. Const 1963, art 1, § 17.

This Court has the authority to grant a writ of certiorari of a final judgment of a state court in very limited circumstances,

> **1257(a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where**

> **any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.**
>
> **(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals. (Emphasis Added).**

28 USC 1257(a).

In accord with this Congressionally mandated jurisdictional limit, this Court has adopted rule 10 which provides in pertinent part,

> **.1 A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered: ...**
>
> **(b) When a state court of last resort has decided a federal question in a way**

> **that conflicts with the decision of another state court of last resort or of a United States Court of Appeals. (Emphasis Added).**

SCR 10.1(b).

Neither the recognition by a state court of a federal question nor the presentment of a federal question to a state court is sufficient to give this Court jurisdiction. "[I]t must appear, by clear and necessary intendment, that the question must have been raised, and must have been decided, in order to induce the judgment." **Commercial Bank of Cincinnati v Buckingham's Executors**, 46 US 317, 341; 12 L Ed 169 (1847).

The decision by a state court of a federal question must have been "necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it." **Brown v Atwell**, 92 US 327, 329; 23 L Ed 511 (1875). Even if the judgment of a state court rests upon both a

federal and a state decision, or if it is not clear upon which ground it was decided, this Court does not accept jurisdiction. **Lynch v New York**, 293 US 52, 54-55; 55 S Ct 16, 79 L Ed 191 (1934).

A review of the memorandum decision of the Michigan Court of Appeals, with a firm understanding of this Court's jurisdictional limits, demonstrates that this Court cannot grant the writ of certiorari. The Michigan Court of Appeals did not decide a "federal question."

The Michigan Court of Appeals memorandum decision did not rely upon any federal constitutional or case law authority. The only authorities cited are two earlier decisions of the Michigan Court of Appeals.

The first decision, **People v Reddish**, 181 Mich App 625; 450 NW2d 16 (1989) does not cite any federal authority in establishing a test for determining whether pre-arrest delay

violates a citizen's due process rights. The second decision, **People v Bisard**, 114 Mich App 784; 319 NW2d 670 (1982), expressly states that it is providing "**Michigan**'s test for determining a claim that an accused's due process rights have been violated by a delay in arrest." **Bisard**, at 787.

Although the **Bisard** Court referred to this Court's decision in **United States v Marion**, 404 US 307; 92 S Ct 455; 30 L Ed 2d 468 (1971) and **United States v Lovasco**, 431 US 783; 97 S Ct 2044; 52 L Ed 2d 752 (1977), the **Bisard** court rejected this Court's decisions in establishing the guidelines for a due process violation. Instead, the Michigan Court of Appeals fashioned a test based upon a decision of the Illinois Supreme Court, **People v Lawson**, 67 Ill2d 449; 10 Ill Dec 478; 362 NE2d 1244 (1977).

Petitioner forgets that the Constitution of the State of Michigan provides due process protection:

> **No person shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty or property,without due process of law. The right of all individuals, firms, corporations and voluntary associations to fair and just treatment in the course of legislative and executive investigations and hearings shall not be infringed.**

Const 1963, art 1, § 17.

Further proof of this Court's lack of jurisdiction is the express rejection in the Michigan Court of Appeals memorandum decision of the very "bad faith" test Petitioner seeks this Court to adopt,

> **Plaintiff's claim that a defendant must show bad faith pursuant to Arizona v Youngblood, 488 US ___; 109 S Ct 333; 102 L Ed 2d 28 (1988) is unsupported by the cited case of People v Leigh, 182 Mich App 96, 98; 451 NW2d 512 (1989).**

Mallory, supra. In sum, Petitioner unsuccessfully sought to have the Michigan Court of Appeals adopt the "bad

faith" requirement under the due process clause of the Michigan Constitution. Petitioner cannot now appeal this interpretation of the Michigan Constitution.

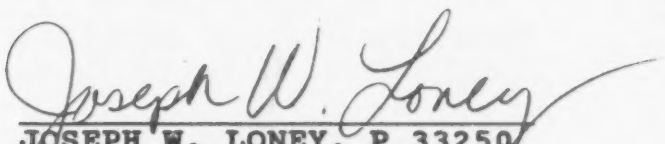
Accordingly, this Court does not have jurisdiction under 28 USC 1257(a) to consider petitioner's writ of certiorari. Therefore, this Court must deny the writ of certiorari.

CONCLUSION

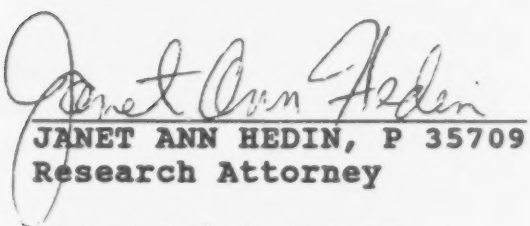
WHEREFORE, Respondent respectfully submits that this Court deny Petitioner's writ.

Respectfully submitted,

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